

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

Kevin Rocheville

v.

Thomas Goulden, Matthew Keenlside,
Brian McCarthy, Joseph O’Roark,
Michael McCall, Allison Caprigno,
Jody Harris-Stern, John Does,
Jane Does, and Town of Pelham, NH

Civil Action No. 19-CV-01169-PB

MICHAEL MCCALL’S MOTION TO DISMISS

NOW COMES Defendant Michael McCall, through counsel, and pursuant to Fed. R. Civ. P. 12(b)(6) moves to dismiss the claims asserted against him. In support hereof, Defendant relies upon the accompanying Memorandum of Law and further states as follows:

1. Plaintiff broadly asserts that, after he reported that a Pelham police officer was having an affair with Plaintiff’s girlfriend, he was subjected to a course of harassment that culminated in his malicious prosecution for violating animal cruelty laws. Based thereon, he has brought a wide range of state and federal claims against a half dozen Pelham officers and employees.

2. Three of those claims – Intentional Infliction of Emotional Distress, Defamation, and “Per Se Defamation” (Counts VIII – X) - are brought against Defendant (and former prosecutor) Michael McCall.

3. As a prosecutor, however, McCall is immune from liability on all claims. *Imbuler v. Pachtman*, 424 U.S. 409, 424-27 (1976).

4. Moreover, even were the immunity disregarded, the sparse allegations concerning McCall’s conduct fail to support a claim for intentional infliction of emotional distress, and the

statements attributed to McCall are not actionable. *See Morancy v. Morancy*, 134 N.H. 493 (1991) (setting out elements of emotional distress claim); *Automated Transactions, LLC v. American Bankers Association*, 2018-198 (Aug. 16, 2019) (affirming dismissal of defamation claims based on derogatory but not defamatory statements).

5. Under these circumstances, each of the claims against McCall must be dismissed.

WHEREFORE, Defendant respectfully requests that this Court:

- A. Grant the instant motion and dismiss all claims against this Defendant; and
- B. Grant such further relief as justice requires.

Respectfully submitted,

MICHAEL MCCALL

By his Attorneys,

CULLENCOLLIMORE, PLLC

Dated: December 16, 2019

By: /s/ Brian J.S. Cullen
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CERTIFICATE OF SERVICE

I certify that a copy of this filing was served via the Court's ECF filing system upon counsel of record.

Dated: December 16, 2019

/s/ Brian J.S. Cullen
Brian J.S. Cullen